

complaint

Mr D complains that Aviva has rejected his home insurance claim for theft, malicious damage and fire damage to his property, and that it has voided his policy for breach of the fraud condition. He also claims for his mortgage payments and Council Tax.

background

Mr D took out a policy with Aviva on 29 January 2019. In February 2019 he said was made aware that the property had been broken into and damage caused and items stolen. Subsequently the property suffered an arson attack and considerable damage was caused. He made a claim for this as well.

Aviva appointed loss adjusters who interviewed Mr D. In the course of that interview he said he hadn't been living in the property and lived at rented property elsewhere. The property insured by Aviva had been rented out to tenants previously. The loss adjusters contacted the police and discovered that the report of the break-in had been made to the police on 28 January 2019. Mr D had declared the property to be where he was living at the time of taking out the policy and Aviva confirmed that the policy wasn't available for let properties.

Aviva advised Mr D that he was in breach of the fraud condition in the policy as he had tried to make a claim for damage that had occurred before the policy was taken out. As a result it voided the policy (cancelled it back to its start) and declined to make any payment in respect of any of the claims.

On referral to this service our investigator said that Aviva had acted reasonably. Mr D disagreed, pointing out that he had a genuine fire claim and that he could prove that at the time of the fire there were no tenants at the property.

The matter has been referred to me for further consideration.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

theft/malicious damage

The evidence that the loss adjusters obtained showed the break-in and damage happened before the policy had been set up. The crime reference number supplied by Mr D referred to a break-in which occurred a day before the policy was set up. So there was clearly no cover for this. But Aviva said that in attempting to say the break-in had happened after the policy was set up Mr D was in breach of the fraud condition in the policy which says:

"If your claim is in any way dishonest or exaggerated we will not pay any benefit under this policy or return any premium to you and we may cancel your policy immediately and backdate the cancellation to the date of the fraudulent claim. We may also take legal action against you."

The effect of the condition is that if Aviva is satisfied that it applies, it has the right to reject any claim and cancel the policy back to the date of the fraudulent claim. Mr D may have chosen not to proceed with this claim, but he did initially make it and Aviva is entitled to

apply the condition if it thinks fraud has occurred. Whilst I can't make a finding against Mr D, I nevertheless consider that Aviva has reasonably applied the condition, in light of the circumstances of this claim.

fire

I appreciate that the fire happened after the policy was taken out. Nevertheless the loss adjusters' investigations found that Mr D wasn't living at the property and that he had been letting the property out. He admitted that he was living at a rented property elsewhere, which is the address that appears on his driving licence. When he took out the policy he said his address was the risk address (the address for which he had taken out the policy) so he was in breach of the policy conditions by not living there and renting it out. Even though as he says the property wasn't rented out at the time of the claim, I can see no evidence that he intended to live there when the policy was taken out.

Aviva could have decided to void the policy for misrepresenting the circumstances at the start of the policy, but it has voided the policy for the breach of the fraud condition. This dates back to the date of the original claim for theft and malicious damage. As the policy is null and void from that date any claims after that won't be paid as there is in effect no policy in existence. So though the claim is genuine there's still no cover for it under the policy.

mortgage/council tax

The policy doesn't cover these payments unless they can be shown to be a direct loss as a result of an accepted claim. I note the property has since been repossessed and sold at what Mr D feels to be a much reduced price. However Aviva isn't responsible for that loss.

my final decision

I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 15 July 2021.

Ray Lawley
ombudsman